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14 UNITED STATES BANKRUPTCY COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 In re) CASE NO. 95-10911 aj
17)
18 GERALD ARMSTRONG,	) Chapter 7
19)
20 Debtor	) Adv. No. 95-1164
21)
22	) CREDITOR AND PLAINTIFF
23 CHURCH OF SCIENTOLOGY	) CHURCH OF SCIENTOLOGY
24 INTERNATIONAL, a California non-	) INTERNATIONAL'S
25 profit religious corporation,	) MEMORANDUM OF POINTS
26	) AND AUTHORITIES IN
27 Plaintiff,	) SUPPORT OF MOTION TO
28	) STRIKE DEFENDANT GERALD
	) ARMSTRONG'S AMENDED
Y:	) ANSWER
GERALD ARMSTRONG,	) [B.R. 7008; F.R.C.P.
	) 8(b), (c), (e); B.R.
Defendant.	) 7012(b); F.R.C.P.
	) 12(f)]

TABLE OF CONTENTS

<u>TITLE</u>	<u>PAGE</u>
I. INTRODUCTION	1
II. STATEMENT OF FACTS	2
III. ARGUMENT	4
A. Armstrong's Answer Should Be Stricken Because It Consists Almost Entirely Of Allegations Which Are Impertinent, Immaterial, And Scandalous	4
B. Armstrong's Affirmative Defenses Must Be Stricken Because They Are Insufficient On Their Face	10
IV. CONCLUSION	11

TABLE OF AUTHORITIES

<u>CASE</u>	<u>PAGE</u>
<u>Budget Dress Corp. v. International Ladies' Garment Workers' Union, AFL-CIO</u>	
25 F.R.D. 506 (S.D.N.Y. 1959)	6
<u>Ex Parte Tyler,</u>	
70 F.R.D. 456 (E.D.Mo. 1976)	7
<u>Fantasy, Inc. v. Fogerty,</u>	
984 F.2d 1524 (9th Cir. 1993)	4, 5
<u>Mahurin v. Moss,</u>	
313 F.Supp. 1263 (E.D. Mo. 1970)	7
<u>Sidney-Vinstein v. A.H. Robbins Co.,</u>	
697 F.2d 880 (9th Cir. 1983)	5
<u>Stanfield v. Horn,</u>	
704 F. Supp. 1486 (M.D. Tenn. 1988)	6
<u>Talbot v. Robert Matthews Distributing Co.,</u>	
961 F.2d 654 (7th Cir. 1992)	6
 <u>OTHER</u>	
11 U.S.C. § 523(a)(2)	2
11 U.S.C. § 727(a)(4)(A)	2
11 U.S.C. § 727(a)(5)	2
Rule 8(b)	4
Rule 12(f)	4

1 I. INTRODUCTION

2 Plaintiff Church of Scientology International ("the Church")
3 filed a complaint to determine dischargeability and in objection
4 to the discharge of defendant debtor Gerald Armstrong, after
5 Armstrong filed a petition for bankruptcy with this Court in
6 which he claimed to own no stock or interests in incorporated
7 businesses. Armstrong, however, is the sole shareholder in a
8 company which he incorporated in 1987, the Gerald Armstrong
9 Corporation ("GAC") Armstrong claimed under oath in May, 1995,
10 that the estimated value of GAC's assets was \$1 billion to \$1.5
11 billion [Ex. A, 545:19 - 549:18].

12 In response to the Church's straightforward complaint,
13 Armstrong has filed a 40-page answer, which consists of a lengthy
14 diatribe of scandalous, irrelevant, and ad hominum attacks on
15 plaintiff, plaintiff's religion, plaintiff's counsel, and the
16 deceased founder of the Scientology religion; argumentative
17 "specific denials" which ignore plaintiff's pleading while
18 repeating his scandalous accusations; and forty-five "affirmative
19 defenses," which consist solely of titles.

20 In short, the amended answer is not what is required by Rule
21 8(e): a responsive pleading which is "simple, concise, and
22 direct." If permitted to stand, the amended answer would allow
23 literally hundreds of highly prejudicial allegations, all of them
24 irrelevant to this action, to stand as part of the pleadings,
25 which are supposed to frame the issues of the litigation.
26 Armstrong's amended answer should be stricken, pursuant to Rule
27 12(f), and Armstrong admonished that he, like other litigants, is

28

1 required to follow the Bankruptcy Rules and the Federal Rules of
2 Civil Procedure in this Court.

3 **II. STATEMENT OF FACTS**

4 Debtor Armstrong filed his petition in bankruptcy on April
5 19, 1995. Thereafter, creditor Church of Scientology
6 International filed a motion for relief from stay, in order to
7 pursue to its conclusion a pending state court action for breach
8 of contract. That motion was granted by this Court on May 25,
9 1995. In the state case, potentially dispositive motions for
10 summary adjudication are pending, and scheduled to be heard on
11 September 29, 1995.

12 On July 11, 1995, the Church filed an adversary petition
13 with this Court, seeking a determination (1) that Armstrong's
14 debts are not dischargeable pursuant to 11 U.S.C. § 727(a)(4)(A);
15 (2) that Armstrong's debts are not dischargeable pursuant to 11
16 U.S.C. § 727(a)(5); and (3) that Armstrong's debt to the Church
17 is not dischargeable pursuant to 11 U.S.C. § 523(a)(2). The
18 basis for the Church's complaint is simple and straightforward:
19 Armstrong failed to disclose substantial assets in his petition
20 for bankruptcy or, if the assets were dissipated prior to filing,
21 has no adequate explanation for their dissipation, and Armstrong
22 entered into the underlying agreement with the Church by fraud
23 and deceit. [Complaint, paras. 21, 26-29, 31-37.]¹

24
25 ¹ The evidence supporting plaintiff's claims is also simple and
26 straightforward: inter alia, Armstrong's testimony under oath
27 concerning the ownership and value of the asset in question
28 (interest in the Gerald Armstrong Corporation); Armstrong's
contract with the Church [Exhibit A to the Complaint]; judicial
orders enforcing the contract; and a videotape, made at the time

1 On August 14, 1995, Armstrong filed an answer to the
2 Complaint. This initial document consisted of a 20-page
3 narrative titled "Introduction" and "History," a listing of the
4 titles of 45 "Affirmative Defenses," and a single sentence
5 "General Denial." On August 18, 1995, Armstrong amended his
6 answer. The amended answer includes all of the material in the
7 original answer, and adds a 17-page series of "Specific Denials,"
8 making it 40 pages in length.

9 The answer lacks connection both to the issues of the
10 complaint. The "Introduction" and "History" consist of a
11 rambling, disjointed narrative in which Armstrong purports to
12 describe, in the most vituperative terms imaginable, his views,
13 feelings, beliefs, and arguments about his former religion and
14 its Founder; the plaintiff and its leaders; the plaintiffs'
15 lawyers; and all of the judges who have in the past ruled against
16 him. The material covers, roughly, Armstrong's allegations about
17 his religious experiences in and with Scientology (from 1969 to
18 1982); his personal characterization of the Scientology religion;
19 his viewpoint that the Church and each of its members is "evil"
20 and "neo-satanic;" and his opinion that all of his actions are
21 divinely inspired and constitutionally protected. None of this
22 material is responsive to any allegation contained in the
23 complaint, nor is it material to any issue presented by this
24 case.

25 Much of the text of the 17 pages of "Specific Denials" is

26 _____
27 that the contract was signed, in which Armstrong made the false
28 representations.

1 repetition of the allegations contained in the narrative portions
2 of the answer, coupled with denials or admissions of some parts
3 of the allegations contained in the Complaint.

4 While burying the Court with extraneous and irrelevant
5 allegations, Armstrong has simultaneously failed to make specific
6 allegations which he is required to make. For example, contrary
7 to B.R. Rule 7012(b), Armstrong refuses to admit or deny that
8 this is a core proceeding. [Amended Answer, ¶ 2.] He has also
9 listed by name 45 "affirmative defenses," but he has made no
10 allegations concerning any of them, as required by F.R.Civ.P.
11 8(c).

12 III. ARGUMENT

13 Rule 12(f) provides that a court may strike "any
14 insufficient defense or any redundant, immaterial, impertinent or
15 scandalous matter." Rule 8(b) provides that a defendant "shall
16 state in short and plain terms the party's defenses to each claim
17 asserted, and shall admit or deny the averments upon which the
18 adverse party relies." Rule 8(e) provides that, "[e]ach averment
19 of a pleading shall be simple, concise and direct." These rules,
20 and the cases interpreting them, provide the ample authority for
21 the relief which the Church seeks.

22 A. Armstrong's Answer Should Be Stricken Because It Consists 23 Almost Entirely Of Allegations Which Are Impertinent, Immaterial, And Scandalous

24 "The function of a 12(f) motion to strike is to avoid the
25 expenditure of time and money that must arise from litigating
26 spurious issues by dispensing with those issues prior to
27 trial. . . ." Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th

1 Cir. 1993) quoting Sidney-Vinstein v. A.H. Robbins Co., 697 F.2d
2 880, 885 (9th Cir. 1983). In Fogerty, the Ninth Circuit
3 delineated some of the types of material which is properly the
4 subject of a motion to dismiss:

5 "Immaterial" matter is that which has no essential
6 or important relationship to the claim for relief or
7 the defenses being pleaded. "Impertinent" matter
8 consists of statements that do not pertain, and are not
9 necessary, to the issues in question. Superfluous
10 historical allegations are a proper subject of a motion
11 to strike.

12 697 F.2d at 1527 (citations omitted, emphasis supplied).

13 In Fogerty, the defendant to a copyright claim included
14 lengthy historical allegations in his answer, and argued that he
15 was trying to show a "pattern of abuse" to support his claim that
16 the plaintiff had breached a music publishing agreement,
17 justifying his own breaches. The district court ordered the
18 allegations stricken, and the Ninth Circuit upheld the decision,
19 noting that the district court had correctly found that the
20 lengthy historical allegations, rather than providing
21 "foundational facts" or "background," as claimed by the
22 defendant, "created serious risks of prejudice to [plaintiff],
23 delay and confusion of the issues." Id at 1528. The allegations,
24 like those made here, "consisted of stale and barred charges that
25 had already been extensively litigated, and would have been
26 burdensome" for the plaintiff to respond to. Id. Further, the
27 court noted, the stricken allegations would have "unnecessarily
28 complicated the trial of the copyright claim. . . potentially
adding weeks to the trial." Id. Each of these reasons supported
the trial court's granting of plaintiff's motion to strike.

1 Allegations are stricken even more readily by courts if they
2 are "scandalous" in addition to being immaterial. "Allegations
3 may be stricken as scandalous if the matter bears no possible
4 relation to the controversy or may cause the objecting party
5 prejudice." Talbot v. Robert Matthews Distributing Co., 961 F.2d
6 654, 664 (7th Cir. 1992) (Striking allegations in a labor action
7 that the defendants had intentionally caused an outbreak of
8 salmonella poisoning). Moreover, "Rule 8(e) demands conciseness
9 in pleading. Courts will not permit a party to use his pleadings
10 as a dumping ground for that evidence which he may not otherwise
11 be able to present to the trier of the facts." Budget Dress
12 Corp. v. International Ladies' Garment Workers' Union, AFL-CIO 25
13 F.R.D. 506, 508 (S.D.N.Y. 1959) (Striking allegations in answer,
14 made "with gruesome and evidentiary detail," of conspiracies
15 between plaintiff and "racketeers").

16 Nor does a litigant's pro se status give him carte blanche
17 to use the Court's files as a "dumping ground." In Stanfield v.
18 Horn, 704 F. Supp. 1486 (M.D. Tenn. 1988), for example, a law
19 student who failed the bar exam brought a civil rights action
20 against various state officers pro se. When the magistrate
21 issued a report recommending that the case be dismissed for lack
22 of subject matter jurisdiction, the plaintiff filed a 117-page
23 objection to the magistrate's report which vigorously attacked
24 the magistrate, claiming that he had "deliberately, willfully,
25 intentionally and wrongfully distorted, misrepresented, falsified
26 and misinterpreted" the facts of her case. Id. at 1486. Noting
27 that, "[a] scandalous matter is that which improperly casts a
28

1 derogatory light on someone, most typically a party to the
2 action" the court found that the plaintiff's pleadings were
3 "indecent and violative of every rule of pleading and should not
4 be permitted to pollute the records of the Court." Id. at 1487.
5 The Objection was stricken in toto. Accord, Ex Parte Tyler, 70
6 F.R.D. 456 (E.D.Mo. 1976) (Pro se complaint containing
7 "immaterial, impertinent or scandalous matter" stricken in
8 toto.); Mahurin v. Moss, 313 F.Supp. 1263 (E.D. Mo. 1970)
9 (Allegations in "incoherent, rambling and largely unintelligible"
10 pro se complaint that certain defendants were gangsters
11 controlled by the Mafia stricken under Rule 12(f)).

12 Here, Armstrong has presented an answer which consists
13 almost entirely of allegations which are, rambling, disjointed,
14 immaterial, impertinent and scandalous, by any definition. He
15 begins his amended answer with a 4-page "introduction" and a 16-
16 page "history" which do not address any of the issues presented
17 in the complaint, and which do not set forth any concise
18 statement of a defense. Rather, these pages comprise a lengthy
19 and scandalous diatribe, viciously attacking the Church², the
20
21

22 ² For example, Armstrong falsely alleges that plaintiff Church,
23 "has a reputation in its legal affairs for dirty tricks, threat,
24 dishonesty, deception, attrition and overwhelm which is widely
25 known and feared by this country's attorneys and by the media."
26 Am. Answer at 3; that the Church, "also has a widely known
27 reputation for using bullying and dishonest private investigators
28 to harass perceived opponents pursuant to 'fair game' and for
shielding their aggressive and corrupt activities behind the work
product privilege of corrupt attorneys." Id.; and that the Church
obtained its tax exempt status (which was the result of the most
extensive IRS investigation of any church in the history of this
country), by "illegal means." Id. at 20.

1 founder of the Scientology religion,³ its present ecclesiastical
2 leaders,⁴ its religious philosophy,⁵ its attorneys,⁶ and even
3 judges who have ruled against him,⁷ while simultaneously
4 proclaiming that Armstrong is divinely inspired in his words and
5 actions.⁸ These allegations are reiterated and repeated

7
8 ³ Armstrong, for example, falsely alleges that Mr. Hubbard, who
9 has been dead for nearly 10 years, was "paranoid,"
10 "schizophrenic," Id. at 1; a "pathological liar," "greedy,"
11 "lustful of power," and "vindictive," Id. at 1, 7; a bigamist,
12 id., a drug addict, id. at 8, and a neo-satanist, id. at 6.

13 ⁴ Armstrong, for example, falsely accuses current Scientology
14 religious leaders of "harassing" him, by "judicial enforcement of
15 an illegal and evil contract," Id. at 3; "subjecting" him to a
16 "campaign of covert and over character assassination," Id.; and
17 "involvement" "in white collar crime, including securities scams
18 and extortion." Id. at 20.

19 ⁵ Armstrong falsely proclaims, for example, that Scientology, an
20 established world religion with millions of adherents, is "neo-
21 satanic," id. at 3, 18, "anti-Christian," id. at 4, and a
22 "religious fraud," id. at 19.

23 ⁶ Armstrong refers to Scientology's counsel as "corrupt," Id. at
24 3, and falsely accuses that one of the attorneys representing the
25 Church in this action, Laurie Bartilson, of executing false
26 statements concerning him, because she is allegedly, "completely
27 under the power of David Miscavige." Id. at 20.

28 ⁷ For example, Armstrong falsely alleges that the Honorable Gary
Thomas was "deceived," after "forum shopping" by the Church, into
holding that Armstrong's contract with the Church was valid and
enforceable, and that this ruling was "false," "obnoxious" and
"evil." Id. at 16.

⁸ Armstrong alleges, for example, that, "God in this litigation
is pointing out gently that He is in charge," Id., at 21; indeed,
according to Armstrong, God is responsible for Armstrong's
failure to include his ownership of the Gerald Armstrong
Corporation on his petition for bankruptcy, id. at 36. Armstrong
alleges that God told him to give away all of his assets in 1990,
id. at 27 -30, and claims that God gave him something he calls
"the Unified Field," which he considers to be "mathematical proof
of God's guidance." Id. at 34. He claims that all of his actions
"are religiously motivated and completely protected by this
country's and state's constitutions." Id. at 21.

1 throughout the "Specific Denials," rendering those "denials" an
2 unintelligible diatribe against the "evils" that Armstrong
3 perceives rather than a series of specific responses to
4 allegations in the Complaint.

5 None of these allegations have any material bearing on the
6 instant action. Most describe Armstrong's thoughts, reactions,
7 ideas and viewpoints which he acquired in (variously) 1969, 1984,
8 1986, and 1990. They bear no relationship to whether or not
9 Armstrong made a false declaration in connection with his
10 bankruptcy in May, 1995, or whether Armstrong made false
11 representations when he entered into a contract with the Church,
12 rendering his present obligation to the Church nondischargeable.
13 Those are the issues presented by the complaint in this court.
14 Questions concerning the validity of the contract in question and
15 the amount of Armstrong's obligation are being determined by the
16 state court action, which Armstrong interrupted with his petition
17 for bankruptcy, and concerning which the bankruptcy stay has been
18 lifted. Like the "history" of "stale and barred charges" alleged
19 in Fogerty, supra, Armstrong's religious history and bitter
20 hatred for his former religion do not present legitimate
21 questions to be determined in this (or any) Court, and
22 Armstrong's expression of them is unequivocally prejudicial to
23 plaintiff. Not only are these unsupported and insupportable
24 allegations vicious in their scandalous attacks against plaintiff
25 and anyone associated with plaintiff, but the presentation of
26 evidence concerning these allegations would lengthen the trial in
27 this action by many months.

1 **B. Armstrong's Affirmative Defenses Must Be Stricken Because**
2 **They Are Insufficient On Their Face**

3 Federal Rule of Civil Procedure 12(f) also provides that
4 "the court may order stricken from any pleading any insufficient
5 defense. . . ." Affirmative defenses, like claims, "must meet
6 the pleading requirements of Fed.Civ.P. 8(a)." Flasza v. TNT
7 Holland Motor Express, Inc., 155 F.R.D. 612, 613 (N.D.Ill.1994).
8 Accordingly, "affirmative defenses must set forth a 'short and
9 plain statement' of the defense asserted. If an affirmative
10 defense is insufficient on its face, or comprises no more than
11 'bare bones conclusory allegations,' it must be stricken." Id. at
12 613-614 (emphasis supplied).

13 Here, Armstrong has listed 45 "affirmative defenses" by
14 number and title (e.g., "SIXTH AFFIRMATIVE DEFENSE (Fraud and
15 Deceit)."). He has not made "bare bones conclusory" allegations
16 to support the defenses -- he has made no allegations to support
17 the defenses. It is just as if plaintiff had filed a complaint
18 stating "FIRST CLAIM FOR RELIEF (For a Determination That
19 Armstrong's Debts Are Not Dischargeable)" and nothing more after
20 that. Needless to say, this gives plaintiff insufficient notice
21 of what facts Armstrong is relying on to support his defensive
22 claims. Indeed, many of the "defenses" are completely
23 inapplicable in an action simply challenging the discharge of a
24 bankruptcy.⁹ Such a complaint would be insufficient on its face,

25 ⁹For instance, Armstrong claims such defenses as, "This Court
26 Cannot Enjoin the Practice of a Profession," "Unclean Hands,"
27 "Estoppel," "Fraud and Deceit," "Waiver," "Impossibility," "First
28 Amendment -- Religion," "First Amendment -- Press," "Due
Process," and a score of others, none of which are applicable to

1 and Armstrong's defenses are insufficient on their face.
2 Pursuant to Rule 12(f), supra, they, too, should be stricken.

3 IV. CONCLUSION

4 For the reasons set forth above, Armstrong's answer must be
5 stricken as "immaterial, impertinent and scandalous," pursuant to
6 Rule 12(f). His affirmative defenses utterly fail to meet
7 applicable pleading requirements and should also be stricken.

8 Dated: September 5, 1995 Respectfully submitted

9 WILSON, RYAN & CAMPILONGO

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By: Andrew H. Wilson

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Laurie J. Bartilson
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Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

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plaintiff's claims.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

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CHURCH OF SCIENTOLOGY)
INTERNATIONAL, a California)
not-for-profit religious)
corporation,)

Plaintiff,)

vs.)

GERALD ARMSTRONG; DOES)
1 through 25, inclusive,)

Defendants.)

CERTIFIED

0057

Case No. BC 052395

DEPOSITION OF

GERALD ARMSTRONG

VOLUME V

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WEDNESDAY, MARCH 10, 1993

REPORTED BY: LYNN P. NYLUND, CSR NO. 3696

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Ex. A

1 answer any more questions on the subject, so that's the
2 area. That's what I am entitled to and that is another
3 question.

4 What was the value of the real property that
5 you gave away in August of 1990?

6 A. I don't know.

7 Q. How much real property did you give away in
8 August of 1990?

9 A. I was on title on one property.

10 Q. Where was that located?

11 A. 707 Fawn Drive.

12 Q. To whom did you convey it?

13 A. Michael Walton.

14 Q. Did you live at 707 Fawn Drive?

15 A. Yes.

16 Q. Did you continue to live there after you
17 conveyed the title to him?

18 A. Off and on.

19 Q. What was the value of the stocks that you
20 gave away in August of 1990?

21 A. A million.

22 Q. To whom did you give the stocks?

23 A. I decline to answer that.

24 Q. Were the stocks stocks in public-traded
25 corporations?

1 A. No.

2 Q. Private corporations?

3 A. Yes.

4 Q. What corporations?

5 A. It is The Gerald Armstrong Corporation.

6 Q. How did you ascertain the value of those
7 stocks at one million dollars?

8 A. Through a logical assessment of the value of
9 the assets.

10 Q. Did you have any kind of independent
11 appraiser appraise the value of the stocks or the
12 underlying assets?

13 A. No, as to that transaction.

14 Q. Did you do that at some other point in time?

15 A. I have had pieces of work evaluated.

16 Q. Is this pieces of work that were property of
17 the Gerald Armstrong Corporation?

18 A. Correct.

19 Q. When did you have those pieces of work
20 evaluated?

21 A. Some time in the past.

22 Q. Before or after August of 1990?

23 A. Before.

24 Q. And the individual pieces of work that you
25 had evaluated prior to August of 1990 were all still in

1 the custody and assets of The Gerald Armstrong
2 Corporation in August of 1990?

3 A. Well, not -- not some of them.

4 Q. Does that mean that some were and some were
5 not?

6 A. Correct. Some were and some weren't.

7 Q. Okay. Those works that were still in the
8 custody of The Gerald Armstrong Corporation August of
9 1990 that you had evaluated, what was the appraised value
10 of those works?

11 A. \$900,000.

12 Q. Did you get a written appraisal?

13 A. No.

14 Q. Who performed the evaluation for you?

15 A. I decline to say.

16 Q. What was the nature of the work that you had
17 evaluated?

18 A. Artistic and literary.

19 Q. Were you the author of the works?

20 A. For the most part, yes.

21 Q. What happened to the work that you had
22 evaluated that was not still property of the Armstrong
23 Corporation in August of 1990?

24 A. I don't know what ultimately happened to it,
25 but I know that it was stolen from the trunk of my car by

1 your organization and that it ended up in the hands of
2 David Miscavige, so you know where it is and I don't.

3 Q. When did you have evaluated the work that
4 you allege was stolen from the trunk of your car?

5 A. Sometime prior to its theft.

6 Q. Do you remember the date?

7 A. Not specifically.

8 Q. Do you remember the year?

9 A. 1984.

10 Q. Who evaluated it?

11 A. I decline to say.

12 Q. What do you claim the evaluator appraised
13 its monetary value as?

14 A. \$50,000.

15 Q. Did you receive a written appraisal or
16 evaluation from the person who evaluated it?

17 A. No.

18 Q. Was it someone other than yourself?

19 A. No.

20 Q. So that's the value that you placed on it?

21 A. Oh, I am sorry. Yes, it was.

22 Q. Yes, it was. And you are changing your
23 previous answer. Yes, it was someone other than you?

24 A. Someone other than myself.

25 Q. Whose name you won't tell me?

1 A. Yes.

2 Q. Was it the same person who evaluated the
3 works at \$900,000?

4 A. No.

5 Q. What year were the other works that you say
6 were evaluated at \$900,000 evaluated?

7 A. I think '89.

8 Q. Are these still works -- works still the
9 property of The Gerald Armstrong Corporation?

10 A. Most of them.

11 Q. What happened to the works that are not any
12 longer property of The Gerald Armstrong Corporation?

13 A. The corporation gave them to me. I --
14 that's other than the ones which were taken.

15 Q. So what is the value of the evaluated amount
16 attributed to the works that still remain the property of
17 The Gerald Armstrong Corporation?

18 A. I think they are close to 1.5 billion.

19 Q. And who's evaluated them at that amount?

20 A. I did.

21 Q. Did you have any independent appraiser
22 evaluate your amount?

23 A. No.

24 Q. So that's your estimate of their worth?

25 A. Right.